

Civil Procedure in Justice Court

A suit may be filed against a party or parties for an amount up to \$7,000.00. If you are asking for damages in excess of \$7,000.00, you must file the case in District Court.

A Complaint is the governing document for your suit. It is important that you be specific about amounts, ongoing costs, eviction, rent, damages, etc. *on the Complaint*.

A mandatory filing fee of \$35.00 must be filed with your case.

You may have the Sheriff, private Process Server or any person over the age of 18 who is not a party to the action serve the papers as long as proper service and proper return of service is filed with the Court. Any fee for service is considered court costs. Proof of service and the original Summons must be returned to the Court before you may proceed.

The defendant has twenty (20) calendar days from the date he/she is actually served to file a written answer with the Court together with a \$20.00 filing fee. A defendant in an Action for Possession/Unlawful Detainer has ten (10) working days from the date she/he is actually served to file a written answer to the Court. The defendant must mail a copy of the Answer to the Plaintiff or Plaintiff's attorney at the time the Answer is filed. It does not need to be registered mail.

If the defendant is filing an Answer and Counterclaim, the Answer and Counterclaim must be served upon the plaintiff. The plaintiff has twenty days (20) calendar days from the date they are actually served to file a written reply to a Counterclaim.

When an Answer is filed the Judge will review the file and determine if the matter will be either set for Mediation or Trial. Both parties will receive notice and must come prepared to defend their cases.

If the defendant fails to file an Answer or the plaintiff fails to answer a counterclaim within the twenty (20) or (10) days (for Action for Possession) of service:

1. You may file a Motion for Default with Order and default will be entered. You may make written application for Judgment. You must prove the amount owed to you by filing an affidavit together with verification of damages (receipts, contracts, etc.). If case is an Action for Possession you must 1) file an Affidavit of Non-compliance stating that the defendant is still on the property; and 2) file a Motion for Default/Order. Once the Order is signed, you may request a Writ of Assistance. The judge will sign an Order and a Writ of Assistance that may be taken to the Sheriff's Department for service. After the Defendants are evicted, you may proceed to Judgment.
2. After receiving your Judgment, you may execute on the debtor's wages, bank account(s) or any personal property not exempt by statute. If Judgment is in your favor, costs of filing and service are automatically awarded to you as part of the Judgment.

The clerks will assist you with forms and filing of papers. They may explain the procedure, but they are not allowed to give legal advice to anyone. Further Court Information and Forms are available on Gallatin County Website: www.co.gallatin.mt.us